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IN THE COURT OF APPEALS OF INDIANA

WILLIAM H. MOORE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0610-CR-890
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Cale Bradford, Judge
Cause No. 49G03-0302-MR-25504

July 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In this belated appeal, William H. Moore challenges the fifty-year sentence he received after pleading guilty to voluntary manslaughter and attempted murder. We affirm.

Issues

We address the following issues:

I. Whether the trial court abused its discretion in considering and balancing aggravating and mitigating circumstances; and

II. Whether *Blakely v. Washington*, 542 U.S. 296 (2004), applies to Moore's belated appeal.

Facts and Procedural History[1]

Moore and his wife Veronica separated pending a divorce. Veronica obtained a protective order against Moore. On February 13, 2003, Moore took two handguns and went to Veronica's residence with the intention of killing himself in front of her. Moore saw Raymond Gilbert inside the residence with Veronica and became enraged. He shot Gilbert in the chest, killing him. He pointed a gun at Veronica and pulled the trigger, but the gun misfired. He punched Veronica in the face and beat her until police arrived. Four children were upstairs sleeping when the incident occurred.

The State charged Moore with murder, attempted murder, burglary, battery, carrying a handgun without a license, and invasion of privacy. Pursuant to a plea agreement, Moore pleaded guilty to voluntary manslaughter and attempted murder, both class A felonies.

[1] We note that Moore's counsel included Moore's pre-sentence report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

Sentencing was left to the trial court's discretion. On November 5, 2003, the court sentenced Moore to concurrent fifty-year terms and dismissed the remaining charges. The trial court did not inform Moore of his right to appeal his sentence. On June 20, 2006, the trial court granted Moore's motion to file a belated notice of appeal.

Discussion and Decision

I. Aggravating and Mitigating Circumstances

When Moore committed the offenses, the presumptive sentence for a class A felony was thirty years, with not more than twenty years added for aggravating circumstances and not more than ten years subtracted for mitigating circumstances. Ind. Code § 35-50-2-4.[2] With respect to the presumptive sentencing scheme, this Court has stated,

> When enhancing a sentence, the trial court must set forth a statement of its reasons for selecting a particular punishment. Specifically, the court must identify all significant aggravating and mitigating circumstances, explain why each circumstance is considered aggravating and mitigating, and show that it evaluated and balanced the circumstances. A trial court may enhance a presumptive sentence based upon the finding of only one valid aggravating circumstance.

Leffingwell v. State, 810 N.E.2d 369, 371 (Ind. Ct. App. 2004) (citations omitted). The trial court's sentencing statement need not be exhaustive, but must be sufficient to warrant the conclusion on appeal that the sentence is appropriate. *See Erby v. State*, 511 N.E.2d 302, 304 (Ind. 1987) (referencing prior "manifestly unreasonable" standard); *see also* Ind. Appellate

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[2] Effective April 25, 2005, our legislature replaced the presumptive sentencing scheme with the current advisory sentencing scheme. "[C]ourts generally must sentence defendants under the statute in effect at the time the defendant committed the offense." *White v. State*, 849 N.E.2d 735, 741 (Ind. Ct. App. 2006), *trans. denied*. Moore committed his offenses in 2003 and was sentenced under the presumptive sentencing scheme.

Rule 7(B) (providing that this Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.").

At sentencing, the trial court found the following aggravators: (1) Moore's criminal history, consisting of "just those matters that are reduced to conviction that are contained in the Pre-sentence Report"; (2) Moore's violation of the protective order; (3) that the offenses involved multiple victims; and (4) that "the victims in this case were attacked in the home of at least one of the victims." Tr. at 138. The trial court found the following mitigators: (1) Moore's acceptance of responsibility; and (2) Moore's "strong history" of family support. *Id*. The trial court "[w]eigh[ed] these matters out" and imposed a fifty-year sentence on each count, then "re-weigh[ed] the aggravators versus the mitigators and order[ed] those sentences to be run concurrently." *Id*. at 139.

Moore challenges the sufficiency of the trial court's sentencing statement. "Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. It is within the trial court's discretion to determine whether a presumptive sentence will be enhanced due to aggravating factors." *Leffingwell*, 810 N.E.2d at 371 (citation omitted). To the extent Moore contends that the trial court should have given a particular weight to each aggravating and mitigating factor, we note that it was under no obligation to do so. *See id*. ("[A] trial court is not required to assign a specific weight to each aggravator and mitigator."). To the extent Moore contends that the trial court should have cited specific reasons for its finding of each circumstance, we believe that their aggravating

or mitigating characteristics are self-evident.[3] Finally, to the extent Moore contends that the trial court inadequately weighed and balanced the aggravating and mitigating circumstances, the court's imposition of enhanced concurrent sentences clearly indicates that the aggravators sufficiently outweighed the mitigators to justify a sentence greater than the presumptive but were not sufficiently egregious to warrant consecutive sentences. In sum, Moore has failed to establish an abuse of discretion.

II. Blakely

Simply stated, *Blakely* holds that "the facts used to support an enhanced sentence, other than the fact of a prior conviction, must be found by a jury or admitted by a defendant." *Fulkrod v. State*, 855 N.E.2d 1064, 1067 (Ind. Ct. App. 2006) (citing *Blakely*, 542 U.S. at 301). The United States Supreme Court decided *Blakely* in 2004, and Moore contends that its holding applies to the belated appeal of his 2003 sentence. The Indiana Supreme Court very recently held otherwise in *Gutermuth v. State*, No. 10S01-0608-CR-306, ___ N.E.2d ___ (Ind. June 20, 2007). We therefore affirm Moore's sentence.

Affirmed.

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[3] The pre-sentence report compiled by the probation department indicates that Moore was convicted in 1981 of unlawful distribution of cocaine and in 1987 of fraudulent check, both in South Carolina. The report states that Moore denied the latter conviction. Appellant's App. at 34. Moore admits that he did not vigorously contest the fraudulent check conviction at sentencing, however. *Cf. Carmona v. State*, 827 N.E.2d 588, 599 (Ind. Ct. App. 2005) ("We therefore hold that where a defendant vigorously contests his criminal history, and that criminal history is highly relevant to his sentence, it is incumbent upon the State to produce some affirmative evidence, e.g., docket sheets, certified copies of judgment of convictions, affidavits from appropriate officials, etc., to support a criminal history alleged in a PSI and urged as the basis for sentence enhancement.") (footnotes omitted). We acknowledge that "[t]he significance of a criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Morgan v. State*, 829 N.E.2d 12, 15 (Ind. 2005) (citation and quotation marks omitted). While Moore's prior offenses occurred many years ago and are unrelated to the current offenses, we cannot say, as Moore contends, that the trial court improperly considered his criminal history, which was entitled to at least some aggravating weight.

BAKER, C. J., and FRIEDLANDER, J., concur.

Because Moore's enhanced sentence is supported by additional aggravating circumstances, we need not belabor this issue.